



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Elizabeth A. Crotty and James K. )  
 Orzech, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 Windjammer Village of Little River, )  
 South Carolina, Property Owners' )  
 Association, a South Carolina )  
 Eleemosynary Corporation, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT  
 C/A NO. 2009-CP-26-10523

FILED  
 HORRY COUNTY  
 2012 SEP 18 AM 10:50  
 MELANIE HUGGINS-MAZUR  
 CLERK OF COURT

**ORDER UPON DEFENDANT'S  
 MOTION FOR AN ORDER  
 AND RULE TO SHOW CAUSE**

The above case came before me for hearing at 9:00 a.m. on August 30, 2012, upon the Defendant's Motion seeking an Order and Rule to Show Cause due to the Plaintiffs' failure and/or refusal to comply with the Court's February 22, 2012 Order Denying Defendant's Request for Attorney's Fees but Allowing Defendant to Recover Its Costs in the above-captioned matter. The Plaintiffs, Elizabeth A. Crotty and James K. Orzech, were present, representing themselves *pro se*; counsel for the Defendant, Kenneth R. Moss, Esquire, was present, along with the Defendant's representative, Cindy Dassoulas.

In response to the Defendant's Motion seeking an Order and Rule to Show Cause, the Plaintiffs' prepared and forwarded to Attorney Moss a document dated August 6, 2012 and entitled "Re: August 30th Hearing Plaintiff's Memorandum in Opposition to Defendant's Proposed Order Awarding the Defendant Even More Taxable Costs Pursuant to Rule 54(e) SCRPC." The Plaintiffs' presented their Memorandum to the Court at the

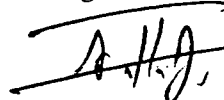
time of the motion, and the Court accepted the Memorandum after confirming with Attorney Moss that the Plaintiffs had provided a copy of the Memorandum to him. The Plaintiffs' Memorandum was never filed with the Clerk of Court.

After reviewing the Plaintiffs' Memorandum, the Court finds that the Memorandum essentially requests that the Court should reconsider its Final Order in the above-captioned case, however no motion has actually been filed. The procedural history of this case is as follows.

### PROCEDURAL HISTORY

The above-captioned matter was tried before me in a bench trial on June 22 and 23, 2011. On June 23, 2011 the Court made its ruling in this matter. The Court signed and issued its Final Order on August 3, 2011; the Defendant filed the Order with the Clerk of Court for Horry County and served a copy upon Plaintiffs' counsel on August 5, 2011.

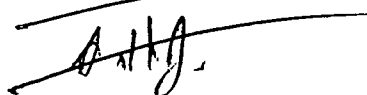
On August 12, 2011, Plaintiffs filed a Notice of Motion and Motion for Reconsideration Pursuant to Rule 59(e), *SCRCP* (hereinafter "Plaintiffs' Motion for Reconsideration"). On August 15, 2011, the Defendant filed a Post-Trial Motion for Attorney's Fees and Costs Pursuant to Rule 54, *SCRCP* (hereinafter "Defendant's Post-Trial Motion"). The costs incurred were supported by receipts and the Affidavit of Defendant's counsel, and receipts and the Affidavit of Angela Marcotte, which were attached to the Defendant's Post-Trial Motion. A copy of the Defendant's Post-Trial Motion, with attachments, was served on Plaintiffs' counsel on August 15, 2011. On



August 29, 2011, the Defendant filed a Return to Plaintiffs' Motion for Reconsideration. On October 7, 2011, the Plaintiffs filed with the Clerk of Court for Horry County a Memorandum in Opposition to Defendant's Post-Trial Motion and Memorandum in Support of Plaintiffs' Motion for Reconsideration, both bearing the date of October 6, 2011. A hearing on the Plaintiffs' Motion for Reconsideration and the Defendant's Post-Trial Motion was scheduled for November 1, 2011; however, Plaintiffs' counsel had received a 90-day suspension from the practice of law and was unable to appear. The hearing was continued until such time as Plaintiffs' counsel would be able to attend. On February 2, 2012, the Defendant filed a Memorandum in Opposition to Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Reconsideration.

A hearing on the parties' Motions was held before the undersigned at 2:00p.m. on February 13, 2012. The Court heard oral argument from the parties on Plaintiffs' Motion for Reconsideration, whereby the Plaintiffs' requested the Court reconsider portions of its Final Order dated August 3, 2011 and filed August 5, 2011. Thereafter, the Court heard oral argument on Defendant's Post-Trial Motion. Defendant's counsel presented to the Court a Supplemental Affidavit of Attorney's Fees and Costs dated January 23, 2012, and signed by Kenneth R. Moss, Esquire. The Supplemental Affidavit itemized attorney's fees and costs the Defendant had incurred with Mr. Moss' law firm as of January 23, 2012.

After reviewing the Memoranda submitted and hearing argument from both parties, the Court issued its written Order on the Defendant's Post-Trial Motion for



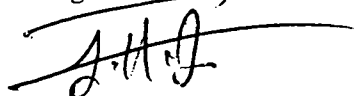
Attorney's Fees and Costs, dated February 22, 2012 and filed February 27, 2012. On March 7, 2012, the Defendant served Plaintiffs' counsel with a copy of the Court's Order Denying Defendant's Request for Attorney's Fees but Allowing Defendant to Recover Its Costs.

On April 30, 2012, counsel for the Defendant filed a Motion seeking an Order and Rule to Show Cause. In response to the Defendant's Motion, Plaintiffs prepared two (2) Memoranda: (1) Plaintiffs' August 6, 2012 Memorandum entitled "Re: August 30th Hearing Plaintiff's Memorandum in Opposition to Defendant's Proposed Order Awarding the Defendant Even More Taxable Costs Pursuant to Rule 54(e) SCRCP," forwarded to Attorney Moss; and (2) Plaintiffs' August 23, 2012 Memorandum entitled "Re: August 30th Rule to Show Cause Hearing: Plaintiffs' Memorandum Requesting That the Court Re-visit the Final Order in the Name of Justice" which was forwarded to the undersigned and Attorney Moss. The Plaintiffs' Memoranda were never filed with the Clerk of Court nor accompanied by a Motion Cover Sheet or any motion filing fee.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In support of the Defendant's Motion, Defendant presented for the Court's review and consideration copies of four (4) email communications between Attorney Moss, the Plaintiffs, and others. The emails were admitted to the Court as Defendant's Exhibits 1 through 4, respectively.

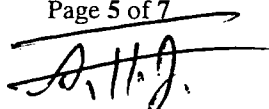
The Defendant's Motion is based upon the failure and/or refusal of the Plaintiffs to pay to the Defendant the costs awarded by the Court in its Order Denying Defendant's



Request for Attorney's Fees but Allowing Defendant to Recover Its Costs, dated February 22, 2012 and filed with the Clerk of Court for Horry County on February 27, 2012. Attorney Moss confirmed to the Court that a copy of the Order was served upon the Plaintiffs, by and through their attorney, on March 6, 2012. A copy of the Certificate of Service by Mail was filed with the Clerk of Court on March 7, 2012. The email communications admitted as Defendant's Exhibits 1 through 4 also show that the Plaintiffs have received a copy of the Order as well as a notice of hearing on the Defendant's Motion seeking an Order and Rule to Show Cause.

In response, the Plaintiffs prepared and forwarded to Attorney Moss a document dated August 6, 2012 and entitled "Re: August 30th Hearing Plaintiff's Memorandum in Opposition to Defendant's Proposed Order Awarding the Defendant Even More Taxable Costs Pursuant to Rule 54(e) SCRPC." While the Court never received a copy of the Plaintiffs' Memorandum, and the Memorandum was not filed with the Clerk of Court, the Plaintiffs presented the Memorandum to the Court at the motion hearing. Upon inquiry by the Court, counsel for the Defendant confirmed he had received a copy of Plaintiffs' Memorandum. The Court accepted Plaintiffs' Memorandum for review, and directed that the Plaintiffs' Memorandum be filed with the Clerk of Court.

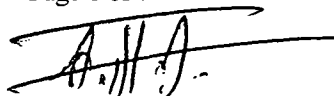
In their Memorandum, the Plaintiffs have asserted they should not be required to pay any costs to the Defendant based upon their assertion that they prevailed in the underlying action. The Plaintiffs' further assert in their Memorandum that the Defendant has not provided a proper basis for the costs for which it sought reimbursement, and



further that they questioned the billing practices by Attorney Moss for his attorney's fees and the costs associated with this action. The Court notes that during the Plaintiffs' arguments, Plaintiff James Orzech incorrectly asserted the amount of costs for which the Defendant sought reimbursement. The record is clear in this case that the Defendant sought significantly more in its Motion for Attorney's Fees and Costs than the Court awarded in its Order dated February 22, 2012.

It is noteworthy that the Plaintiffs never filed any Rule 59 motion seeking to alter or amend the Court's Order dated February 22, 2012, nor did they appeal that Order of this Court. Therefore, this Court's Order Denying Defendant's Request for Attorney's Fees but Allowing Defendant to Recover its Costs dated February 22, 2012 is the law of this case. The Court expects compliance with its prior Order and will not tolerate non-compliance.

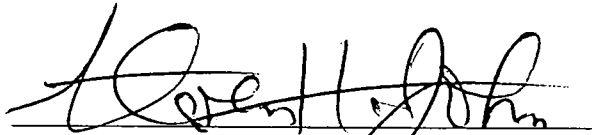
The Court declines to hold the Plaintiffs in contempt of court at this time and has advised the Plaintiffs orally at the Motion hearing and herein that the Court will hold Plaintiffs in contempt of court if the Plaintiffs have failed to fully comply with this Court's prior Order within ninety (90) days, the ninetieth (90th) day being November 28, 2012. If the Plaintiffs have not fully complied with this Court's Order dated February 22, 2012 on or before November 28, 2012, the Plaintiffs may be held in contempt and sanctioned by the Court for their contempt in one or more of the following particulars: (1) the Plaintiffs may be incarcerated in the Department of Corrections for a period of up to one (1) year; (2) the Plaintiffs may be made to serve up to 300 hours of community

A handwritten signature in black ink, appearing to be 'A. H. A.', written over a horizontal line.

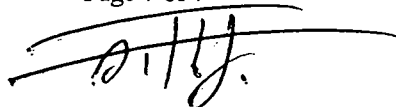
service; and/or (3) the Plaintiffs may be made to pay a fine, all of which may be purged upon Plaintiffs' compliance with the Court's prior Order.

The fact of the Plaintiffs' compliance or non-compliance should be made known to the Court by Attorney Moss by his Affidavit, which shall be filed with the Clerk and a copy of which shall be delivered to the undersigned. The undersigned reserves jurisdiction to hear and decide all further matters concerning the Plaintiffs' compliance with this Court's prior Order.

**IT IS SO ORDERED!**

  
The Honorable Steven H. John  
Resident Judge  
Fifteenth Judicial Circuit

9/14/, 2012  
Conway, South Carolina



DH 1

**Kenneth Moss**

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**From:** Kenneth Moss  
**Sent:** Friday, June 22, 2012 4:03 PM  
**To:** 'James Orzech'; lizcrotty  
**Cc:** Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com); holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com] (gunnar.nistad@mgclaw.com)  
**Subject:** FW: Crotty v. Windjammer 2009-CP-26-10523, Notice of Hearing scheduled for August 30, 2012 at 9:00am

James and Liz,

I understand that you are no longer represented by Attorney Lovelace. Accordingly I have forwarded to you the email that I received from Judge John's Law Clerk this morning. Please do let me know if you, or either of you, are represented by an attorney in the above referenced case I order that I may direct my communications appropriately.

Per the below, Judge John has scheduled a hearing upon the Order and Rule to Show Cause that I have sought on behalf of Windjammer Village because you have not yet paid the costs to the village that you were ordered to pay in Judge John's Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs which is dated February 22, 2012. You might recall that pursuant to the Order, you were supposed to pay to the association the sum of \$1,922.34 in costs. The Order was served upon your attorney on April 23, 2012, prior to any communication being relayed that he no longer represents you.

In order to avoid the hearing on the 30<sup>th</sup>, and possibly the imposition of additional attorney's fees and costs that Judge John might order you to pay, I would encourage you to comply with the order and pay the \$1,922.34 as ordered by Judge John right away. You may deliver the check or funds either to the association office or to my office if you would like to avoid the hearing.

Also, in order to prevent me from having to prepared and have served upon you a notice of the hearing, I do need for you to acknowledge your receipt of this email. Obviously it will costs the association, and consequently the two of you, additional fees if we have to employ a process server to serve you with notice of the hearing.

\*\* Please note that my email address has changed \*\*

**Kenneth R. Moss**  
Wright, Worley, Pope, Ekster & Moss, PLLC  
PO Box 250  
Little River SC 29566  
Tel: 843/ 281-9901  
Fax: 843/ 281-9903  
wwpmlaw.com

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**From:** John, Steven H. Law Clerk (Abbey Gail Cain) [mailto:SJohnLC@sccourts.org]  
**Sent:** Thursday, June 21, 2012 11:46 AM  
**To:** Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com); Kenneth Moss; Kenneth Moss; rroy@cookandroy.com  
**Subject:** Crotty v. Windjammer 2009-CP-26-10523

Counselors,

The Court has scheduled a Rule to Show Cause hearing in the above matter for **August 30, 2012 at 9:00am** in courtroom 3B of the Horry County Judicial Complex.

Thank you,  
Abbey

**Abbey G. Cain**  
Law Clerk to the Honorable  
**STEVEN H. JOHN**  
Resident Circuit Judge  
Fifteenth Judicial Circuit  
843.915.6697

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**Kenneth Moss**

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**From:** James Orzech [james.orzech@earthlink.net]  
**Sent:** Tuesday, June 26, 2012 11:12 AM  
**To:** Kenneth Moss; lizcrotty  
**Cc:** holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com]  
(gunnar.nistad@mgclaw.com)  
**Subject:** Re: FW: Crotty v. Windjammer 2009-CP-26-10523, Notice of Hearing scheduled for August 30, 2012 at 9:00am

Mr. Moss,

Thank you for finally communicating with us directly and not through Mr. Lovelace. We were wondering whether or not WJV would ever ask to be paid. We would appreciate it if the WJV POA would send us an invoice that included copies of the underlying receipts for each cost claimed?

There is no need to serve us and we look forward to the August 30th Hearing with Judge John. Can you please forward to us all communication you had with the Judge that you would have sent to any other opposing attorney. So far we only have some emails. For better or for worse, we are now Per Se, so we deserve to be treated with the same deference that you would pay to any opposing counsel, as does Gunnar Nistad.

Meanwhile, although I am not at liberty to discuss the Mediation, suffice it to say that the most recent information we have from Mr. Lawson is that Defendants intend to make another offer, which now is overdue. We await closure, hopefully to include a proposal that at least makes progress towards a settlement, short of going to Trial in November, That being said, your side has offered up forgiveness of the \$1,900+ Judgment as a Bargaining Chip, so we believe that any further discussion of this matter with you now would be counterproductive, possibly confounding the ongoing efforts of the Mediator.

Ms. Crotty will return tomorrow, so we then shall discuss the issues that you have brought to our attention and review our notes from our meetings with Mr. Lovelace. Also we likely will seek additional professional legal guidance before going forward,

Regards, James Orzech  
phone: (843) 281-2299

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**Kenneth Moss**

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**From:** Kenneth Moss  
**Sent:** Wednesday, June 27, 2012 12:12 PM  
**To:** 'James Orzech'; lizcrotty  
**Cc:** holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com] (gunnar.nistad@mgclaw.com); Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com)  
**Subject:** RE: FW: Crotty v. Windjammer 2009-CP-26-10523, Notice of Hearing scheduled for August 30, 2012 at 9:00am

James,

Thank you for your email. I really cannot agree that WJV will send you an invoice with an itemization of the costs that WJV sought in the motion for fees and costs. The reason is certainly not that WJV and I are not willing, but that we do not fully understand how Judge John came to the decision that he did. I will send you by separate email the breakdown of costs for which we sought reimbursement. In as much as Judge John did not grant to the WJV all that was asked and he did not offer an explanation of that which he granted that that which he did not grant, WJV and I cannot provide to you the requested detail. Again, I will send to you the breakdown of that which we asked for.

Concerning an invoice, I do not believe it to be necessary or appropriate for the WJV to provide you with an invoice. Judge John's Order that was served upon Attorney Lovelace, who by the way has not been relieved as an attorney in the case, is very clear and unambiguous. Payment should have been made months ago. Frankly I feel that Ms. Crotty and you would be ill advised to come into Court on the 30<sup>th</sup> with any assertion that you have not complied with the Order and paid the costs because you have not been provided with an invoice. My guess is that assertion would not sit well with Judge John.

As far as direct communications with Ms. Crotty and you, I will certainly provide you with copies of all communications that I have concerning our case. In as much as no motion or Consent Order has been filed to relieve Attorney Lovelace as your attorney, I will continue to copy him with my communications. While Attorney Nistad is not an attorney in our case, I will copy him upon my communications because you have asked me to do so. I do agree with you, however, that it is appropriate to include Attorney Nistad in our communications.

You are aware of course that I am not involved in your separate litigation with the WJV and several of its residents and I was not present in the mediation conference hosted by Attorney Lawson. If you are not, you should also be aware and mindful that I have not received any communication or direction that Judge John's Order awarding costs to the WJV has been forgiven nor any direction to refrain from proceedings to bring about compliance with Judge John's Order.

Again, I encourage you to comply with Judge John's Order and remit the costs awarded to the WJV immediately in order to avoid your incurring additional fees and costs.

**\*\* Please note that my email address has changed \*\***

**Kenneth R. Moss**  
Wright, Worley, Pope, Ekster & Moss, PLLC  
PO Box 250  
Little River SC 29566  
Tel: 843/ 281-9901  
Fax: 843/ 281-9903  
wwpemlaw.com

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D#4

**Kenneth Moss**

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**From:** Kenneth Moss  
**Sent:** Wednesday, June 27, 2012 12:16 PM  
**To:** James Orzech (james.orzech@earthlink.net); lizcrotty (lizcrotty@earthlink.net)  
**Cc:** holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com] (gunnar.nistad@mgclaw.com); Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com)  
**Subject:** FW: Crotty vs. WJV  
**Attachments:** Order awarding taxable costs per Rule 54(e) SCRCF 02-17-12.doc

James,

As eluded to in my email of a few minutes ago, the below and the attached evidence the costs for which the WJV sought to be reimbursed.

**\*\* Please note that my email address has changed \*\***

Kenneth R. Moss  
Wright, Worley ,Pope, Ekster & Moss, PLLC PO Box 250 Little River SC 29566  
Tel: 843/ 281-9901  
Fax: 843/ 281-9903  
wvpeplaw.com

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-----Original Message-----

**From:** Kenneth Moss  
**Sent:** Wednesday, February 22, 2012 12:07 PM  
**To:** 'John, Steven H. Law Clerk (Abbey Gail Cain)'; Richard Lovelace  
**Cc:** Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com)  
**Subject:** RE: Crotty vs. WJV

Good morning Abbey.

I have worked on but not completed my proof read of the attached draft of the order denying Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs. I did so because I had concerns about the draft prepared by Attorney Lovelace. I was not certain where he found the basis for the amount of costs that he included in his draft order and recognize that he would not have had all of the information that was available to me.

Attached is a draft that includes an itemization of those costs for which the Defendant asserts are properly allowable under Rule 54 and pursuant to Judge John's instructions. Please let me know if I can be of any further assistance. Thank you.

\*\* Please note that my email address has changed \*\*

Kenneth R. Moss  
Wright, Worley, Pope, Ekster & Moss, PLLC PO Box 250 Little River SC 29566  
Tel: 843/ 281-9901  
Fax: 843/ 281-9903  
wwpmlaw.com

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P  
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-----Original Message-----  
From: John, Steven H. Law Clerk (Abbey Gail Cain) [mailto:SJohnLC@sccourts.org]  
Sent: Wednesday, February 22, 2012 11:31 AM  
To: Richard Lovelace  
Cc: Kenneth Moss  
Subject: RE: Crotty vs. WJV

Mr. Lovelace,

Will you please send the attached Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs to me in Word format.

Thank you,

-----Original Message-----

From: Richard Lovelace [mailto:RLovelace@rlovelacelaw.com]

Sent: Friday, February 17, 2012 10:01 AM

To: John, Steven H. Law Clerk (Abbey Gail Cain)

Cc: Ken Moss

Subject: Crotty vs. WJV

Judge John:

Pursuant to your directive, I have drafted two Orders:

1. Order Denying Defendant's Petition for Attorney's Fees, but allowing its Petition for costs.
2. Order Modifying the previous Order of the Court pursuant to my Rule 59(e) Motion for Reconsideration.

A copy of this transmittal is being simultaneously sent to counsel for Defendant.

If, after receiving this, you have further directions to me with regard to text modification, please let me know, and I will see that the changes are promptly made and circulated.

Richard M. Lovelace, Jr., Esquire

Richard M. Lovelace, Jr., PA

P. O. Box 1704

Conway, SC 29528

(843) 248-7321 ext. 305

(843) 248-9364 (Fax)

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
C/A NO. 2009-CP-26-10523

Elizabeth A. Crotty and James K. Orzech, )  
 )  
 )

Plaintiffs, )  
 )  
 )

vs. )

**ORDER AWARDING TAXABLE  
COSTS PURSUANT TO RULE 54(e),  
SCRPC**

Windjammer Village of Little River, )  
South Carolina, Property Owners' )  
Association, a South Carolina )  
Eleemosynary Corporation, )

Defendant. )  
 )  
 )

A hearing was held before me on February 13, 2012 on Defendant's Post-Trial Motion for Attorney's Fees and Costs Pursuant to Rule 54, SCRPC. Plaintiffs Elizabeth A. Crotty and James K. Orzech were present with their counsel, Richard Lovelace, Esq.; Defendant's representative, Cindy Dassoulas, was present along with counsel for Defendant, Kenneth R. Moss, Esq. After hearing argument from both counsel, this Court awarded the Defendant its taxable costs pursuant to Rule 54(e), compelling each of the Plaintiffs, jointly and severally, to pay the costs incurred by the Defendant in defending this action. The costs incurred are supported by receipts and the Affidavit of Defendant's counsel, and receipts and the Affidavit of Angela Marcotte, which were attached to Defendant's Post-Trial Motion for Attorney's Fees and Costs filed on August 15, 2011.

1. Costs Pursuant to Rule 54(e)(2):

Consent Order for Substitution of Counsel filed 09/08/10	\$ 25.00
Notice of and Motion to Consolidate, filed 10/12/10	\$ 25.00

Notice of and Motion to Compel Inspection, filed 11/01/10	\$ 25.00
Notice of and Motion for Leave to Amend Pleadings, filed 11/01/10	\$ 25.00
Defendant's Motion for Continuance, filed 11/10/10	\$ 25.00
Motion to Compel Discovery Responses, filed 12/15/10	\$ 25.00
Post-Trial Motion for Attorney's Fees and Costs, filed 08/15/11	\$ 25.00

**Subtotal** ..... \$ 175.00

2. Costs Pursuant to Rule 54(e)(4):

Subpoena to Roseanne Pazoga for Deposition, issued 01/07/11	\$ 31.50
Copy charge for documents produced by Roseanne Pazoga in response to Subpoena <i>duces tecum</i> , 02/02/11	\$ 40.00

**Subtotal** ..... \$ 71.50

3. Costs Pursuant to Rule 54(e)(5):

Witness Subpoena to Elizabeth A. Crotty, issued 02/07/11	\$ 54.91
Witness Subpoena to James Orzech, issued 05/27/11	\$ 53.67

**Subtotal** ..... \$ 108.58

4. Costs Pursuant to Rule 54(e)(6):

Payment to court reporter Jerry S. Mabry for depositions <sup>1</sup> of Elizabeth Crotty, James Orzech, and Charles Nill, 07/01/10	\$ 502.35
Payment to FedEx Kinkos for copies of plats and Plaintiffs' Architectural plans, 08/03/10 (Defendant's Trial Exhibit No. 21 and various other exhibits incorporating plats	\$ 24.85
Fees paid to investigator for research of County records, 08/16/10	\$ 75.00
Copy of attorney Roger Roy's file, 08/17/10	\$ 170.00
Copies of Horry County Code Enforcement records, (Defendant's Trial Exhibits No. 25 and 36), 08/17/10	\$ 20.00
Transcription fee paid to court reporter Melissa Decker for excerpt of 09/12/02 POA Architectural Committee Report (Defendant's Trial Exhibit No. 23), 08/24/10	\$ 76.00

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<sup>1</sup> Sealed copies of the deposition transcripts for both Plaintiffs was presented at trial and made a part of the Court record. The deposition transcripts were used to by Defendant to impeach the testimony of both Plaintiffs.

Harry S. Bruton for survey of the property (Defendant's Trial Exhibit Nos. 3 and 3A), 11/11/10	\$ 500.00
Enlarged copy/mounting cost for Aerial of Windjammer Village and Plaintiffs' property (Defendant's Trial Exhibit No. 2), and Survey by Harry S. Bruton (Defendant's Trial Exhibit No. 3A), 11/11/10	\$ 150.42
Copy of transcript of 11/03/09 hearing on Temporary Injunction, paid to court reporter Grace Hurley, 11/20/10	\$ 42.25
Enlarged copy/mounting of plat recorded in Plat Book 159 at Page 70, Records of Horry County (Defendant's Trial Exhibit No. 1), 11/26/10	\$ 16.35
Appearance fee for testimony of Harry S. Bruton, Surveyor, regarding Defendant's Trial Exhibits No. 3 and 3A, 06/29/11	\$ 450.00
Court reporter Melissa Decker for deposition testimony of Roseanne Pazoga, <sup>2</sup> 02/04/11	\$ 752.94
One (1) copy of each of the following Defense Exhibits used at trial not itemized above: Nos. 3, 3A, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 24, 27, 28, 29, 30, 31, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 55, 56, 57, 59, 60, and 61 [220 pgs. x \$0.15/pg. = \$33.00]	<u>\$ 33.00</u>
<b>Subtotal</b> .....	<b>\$2,813.16</b>
<b>TOTAL COSTS</b>	<b>\$3,168.24</b>

THEREFORE, I FIND the costs enumerated above are just and proper; and the Plaintiffs are liable, jointly and severally, for payment of these costs to Defendant within sixty (60) days of the date of this Order.

**IT IS SO ORDERED!**

\_\_\_\_\_  
Steven H. John, Presiding Judge  
Fifteenth Judicial Circuit

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 2012

<sup>2</sup> Ms. Pazoga was listed in Plaintiffs' discovery responses as a witness. Copies of Plaintiffs' discovery responses dated January 4, 2011 were filed with the Clerk of Court on May 31, 2011 and are included in the Court's file. Further, via electronic mail dated May 16, 2011, counsel for Plaintiffs provided a witness list indicating Ms. Pazoga would testify as a witness for the Plaintiffs.

## Attachment #1

This attachment includes:

- A. Attorney Moss' proposed 'Order Awarding Taxable Costs Pursuant to Rule 54(e) SCRC'P' c. June 27, 2012.
- B. Attorney Moss' 'Affidavit of Attorney's Fees and Costs' dated August 15, 2011, pages 12 and 13.
- C. Windjammer Village of Little River, POA, Profit & Loss Budget vs. Actual for July 2011 through June 2012.

The seven (7) items totaling \$698.66, which he claimed in both documents, are color-coded in yellow.

The sixteen (16) items totaling \$2,114.50 listed on the June 2012 proposed Order not appearing on the August 2011 Affidavit are color-coded in green.

The eleven (11) items totaling \$453.57, which Moss claimed only on his August 2011 Affidavit that do not appear on his June 2012 proposed Order are color-coded in blue.

Moss' balance due going into fiscal year (July 2011 – June 2012) and WJV POA's Annual Report of budgeted and actual expenses for Legal Fees that year are color-coded in magenta.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
C/A NO. 2009-CP-26-10523

Elizabeth A. Crotty and James K. )  
Orzech, )  
 )  
Plaintiffs, )

vs. )

Windjammer Village of Little River, )  
South Carolina, Property Owners' )  
Association, a South Carolina )  
Eleemosynary Corporation, )  
 )  
Defendant. )

**ORDER AWARDING TAXABLE  
COSTS PURSUANT TO RULE 54(e),  
SCRCP**

A hearing was held before me on February 13, 2012 on Defendant's Post-Trial Motion for Attorney's Fees and Costs Pursuant to Rule 54, SCRCP. Plaintiffs Elizabeth A. Crotty and James K. Orzech were present with their counsel, Richard Lovelace, Esq.; Defendant's representative, Cindy Dassoulas, was present along with counsel for Defendant, Kenneth R. Moss, Esq. After hearing argument from both counsel, this Court awarded the Defendant its taxable costs pursuant to Rule 54(e), compelling each of the Plaintiffs, jointly and severally, to pay the costs incurred by the Defendant in defending this action. The costs incurred are supported by receipts and the Affidavit of Defendant's counsel, and receipts and the Affidavit of Angela Marcotte, which were attached to Defendant's Post-Trial Motion for Attorney's Fees and Costs filed on August 15, 2011.

1. Costs Pursuant to Rule 54(e)(2):

Consent Order for Substitution of Counsel filed 09/08/10	\$ 25.00 ◊
Notice of and Motion to Consolidate, filed 10/12/10	\$ 25.00 ◊

C/A No. 2009-CP-26-10523

Notice of and Motion to Compel Inspection, filed 11/01/10	\$ 25.00	⊖
Notice of and Motion for Leave to Amend Pleadings, filed 11/01/10	\$ 25.00	⊖
Defendant's Motion for Continuance, filed 11/10/10	\$ 25.00	⊖
Motion to Compel Discovery Responses, filed 12/15/10	\$ 25.00	
Post-Trial Motion for Attorney's Fees and Costs, filed 08/15/11	\$ 25.00	⊖

**Subtotal** ..... \$ 175.00

2. Costs Pursuant to Rule 54(e)(4):

Subpoena to Roseanne Pazoga for Deposition, issued 01/07/11	\$ 31.50	
Copy charge for documents produced by Roseanne Pazoga in response to Subpoena <i>duces tecum</i> , 02/02/11	\$ 40.00	⊖

**Subtotal** ..... \$ 71.50

3. Costs Pursuant to Rule 54(e)(5):

Witness Subpoena to Elizabeth A. Crotty, issued 02/07/11	\$ 54.91	
Witness Subpoena to James Orzech, issued 05/27/11	\$ 53.67	⊖

**Subtotal** ..... \$ 108.58

4. Costs Pursuant to Rule 54(e)(6):

Payment to court reporter Jerry S. Mabry for depositions <sup>1</sup> of Elizabeth Crotty, James Orzech, and Charles Nill, 07/01/10	\$ 502.35	⊖
Payment to FedEx Kinkos for copies of plats and Plaintiffs' Architectural plans, 08/03/10 (Defendant's Trial Exhibit No. 21 and various other exhibits incorporating plats	\$ 24.85	⊖
Fees paid to investigator for research of County records, 08/16/10	\$ 75.00	
Copy of attorney Roger Roy's file, 08/17/10	\$ 170.00	
Copies of Horry County Code Enforcement records, (Defendant's Trial Exhibits No. 25 and 36), 08/17/10	\$ 20.00	
Transcription fee paid to court reporter Melissa Decker for excerpt of 09/12/02 POA Architectural Committee Report (Defendant's Trial Exhibit No. 23), 08/24/10	\$ 76.00	⊖

---

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**Subtotal ..... \$2,813.16**

**TOTAL COSTS                    \$3,168.24**

THEREFORE, I FIND the costs enumerated above are just and proper; and the Plaintiffs are liable, jointly and severally, for payment of these costs to Defendant within sixty (60) days of the date of this Order.

**IT IS SO ORDERED!**

\_\_\_\_\_  
Steven H. John, Presiding Judge  
Fifteenth Judicial Circuit

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 2012

<sup>2</sup> Ms. Pazoga was listed in Plaintiffs' discovery responses as a witness. Copies of Plaintiffs' discovery responses dated January 4, 2011 were filed with the Clerk of Court on May 31, 2011 and are included in the Court's file. Further, via electronic mail dated May 16, 2011, counsel for Plaintiffs provided a witness list indicating Ms. Pazoga would testify as a witness for the Plaintiffs.

	<u>Hrs/Rate</u>	<u>Amount</u>
8/14/2011 Review and revision of draft motion and draft affidavits prepared by Ms. Dassoulas.	0.75 200.00/hr	150.00
6/24/2011 Transcribe tape of Judge John's ruling; telephone calls, email to G. Nistad; telephone conference with K. Moss and G. Nistad; review of documents referenced in Judge John's ruling; email to WJV POA Board Members	4.60 70.00/hr	322.00
6/27/2011 Emails to K. Moss	0.20 70.00/hr	14.00
6/30/2011 Telephone conference with C. Nill and L. Holcombe	0.20 70.00/hr	14.00
8/12/2011 Preparation of Petition for Fees and Costs	1.30 70.00/hr	91.00
8/13/2011 Draft Affidavits and work on Petition for Fees and Costs; review file; work on file	6.00 70.00/hr	420.00
<b>For professional services rendered</b>	<b>373.82</b>	<b>\$38,946.79</b>
<b>Additional Charges :</b>		
8/16/2010 Advance of fees paid to investigator for research of county records.		75.00
8/10/2010 Admin Fee		100.00 ☞
8/17/2010 Copying cost from Horry County Code Enforcement		20.00
10/4/2010 Copying cost.		2.10 ☞
Postage		0.44 ☞
11/1/2010 Courier fee.		30.00 ☞
Advance of motions filing fees.		50.00 ☞
Postage and copies		2.50 ☞
11/3/2010 Copying cost.		1.20 ☞
11/20/2010 Transcript of 11/03/09 hearing, payment to Grace L. Hurley, Check #5834		42.25
11/27/2010 Advance of costs at Office Depot for report dividers and for sheet protectors.		176.33 ☞
Copying cost (color copies).		16.00 ☞
1/7/2011 Witness fee- Roseanne Pazoga		31.50

	<u>Amount</u>
2/2/2011 Copying cost, copies of all documents delivered by Rosanne Pozoga.	40.00
12/15/2010 Advance of motion fee to Clerk of Court.	25.00
2/7/2011 Advance of witness fee to Elizabeth Crotty, in connection with trial subpoena.	54.91
6/16/2011 Courier fee, Memorandum of Law	35.00
6/29/2011 Advance of fees to Harry F. Bruton & Associates.	450.00
<b>Total additional charges</b>	<u>\$1,152.23</u>
<b>Total amount of this bill</b>	<u>\$40,099.02</u>
<b>Accounts receivable transactions</b>	
11/24/2010 Payment - thank you.. Check No. 206	(\$5,000.00)
12/12/2010 Credit applied for office supplies kept by firm.	(\$92.44)
12/15/2010 Payment - thank you. Check No. 2148	(\$3,847.94)
2/11/2011 Payment - thank you. Check No. 209	(\$2,018.08)
5/11/2011 Payment - thank you. Check No. 210	(\$1,973.33)
7/1/2011 Payment - thank you. Check No. 211	(\$6,285.00)
<b>Total payments and adjustments</b>	<u>(\$19,216.79)</u>
<b>Balance due</b>	<u><u>\$20,882.23</u></u>

Village of Little River, P.  
**Profit & Loss Budget vs. Actual**  
 July 2011 through June 2012

	Actual	Budget	\$ Over Budget
<b>Ordinary Income/Expense</b>			
<b>Income</b>			
501 · Assessments	307,043.07	307,128.00	-84.93
503 · Amercements			
503a · Gate Fines and Penalties	1,195.62	2,100.00	-904.38
503 · Amercements - Other	2,494.80	2,000.04	494.76
<b>Total 503 · Amercements</b>	<b>3,690.42</b>	<b>4,100.04</b>	<b>-409.62</b>
504 · Interest	1,720.96	2,000.04	-279.08
506 · Social Committee Income	2,175.00	1,500.00	675.00
510 · Contractor and Initiation Fees	4,013.02	2,000.04	2,012.98
511 · Entry Cards	1,242.00	399.96	842.04
512 · Certificate of Assessments	800.00	500.04	299.96
519 · Miscellaneous Income	1,167.30	99.96	1,067.34
<b>Total Income</b>	<b>321,851.77</b>	<b>317,728.08</b>	<b>4,123.69</b>
<b>Expense</b>			
800 · Electricity	17,424.44	21,000.00	-3,575.56
801 · Water	2,818.65	3,500.04	-681.39
802 · Propane	365.51	500.04	-134.53
805 · Insurance	23,766.80	26,000.04	-2,233.24
807 · Time Warner Cable	2,752.26	2,799.96	-47.70
808 · Accounting	5,600.00	6,300.00	-700.00
809 · Legal Fees	1,235.62	24,999.96	-23,764.34
6150 · Depreciation Expense	10,880.69		
6240 · Miscellaneous	64.89		
8000 · Maintenance			
803 · Recycling	1,658.88	2,499.96	-841.08
804 · Garbage	17,799.11	17,000.04	799.07
811 · Gate Maintenance	4,500.00	4,500.00	0.00
812 · Building	2,850.72	3,000.00	-149.28
813 · Streets			
813a · Street Paving	64,622.38	40,857.96	23,764.42
813 · Streets - Other	4,656.01	5,000.04	-344.03
<b>Total 813 · Streets</b>	<b>69,278.39</b>	<b>45,858.00</b>	<b>23,420.39</b>
814 · Grounds	7,739.25	9,999.96	-2,260.71
815 · Pool Contract	7,065.00	8,499.96	-1,434.96
816 · Pool Maintenance and Chemicals	8,163.45	9,999.96	-1,836.51
818 · Equipment	5,941.33	6,000.00	-58.67
820 · Pier and Boat Ramp	1,138.85	2,000.04	-861.19
821 · Tennis and Basketball Courts	614.67	999.96	-385.29
823 · Brush and Leaves	11,068.05	12,000.00	-931.95
<b>Total 8000 · Maintenance</b>	<b>137,817.70</b>	<b>122,357.88</b>	<b>15,459.82</b>
822 · Beautification	4,528.78	6,200.04	-1,671.26
8100 · Salaries			
824 · Office	18,263.75	20,700.00	-2,436.25
825 · Maintenance	31,852.50	38,000.04	-6,147.54

August 1, 2012

Dear James Orzech:

This letter is to explain why I cannot help you with your request for vendor bills submitted by Ken Moss that were included on the "order awarding taxable costs pursuant to Rule 54(e) SCRCP". I am the treasurer for Windjammer Village and although I have seen interim draft bills from Ken Moss that Windjammer Village has made payments on, no final bill has been approved by Ken Moss's office to official submit to Windjammer Village. The reimbursements receipts included in Ken Moss's draft bill are his property and I have no authority to collect this information from him, as I do not handle his bookkeeping or taxes. Im sorry for any inconvenience, but this information will have to be collect directly from Ken Moss and not Windjammer Village.

Thank you again.

Regards,

*M. Basehoar, CPA*

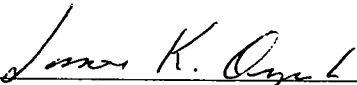
Melissa Basehoar, CPA

Civil Action No. 2009-CP-26-10523

**CERTIFICATE OF SERVICE**

I certify that I have this 6<sup>th</sup> day of August 2012 served a copy of the foregoing **Plaintiffs Memorandum in Opposition to Defendant's Proposed Order Awarding Defendant Even More Taxable Costs Pursuant to Rule 54(e) SCRPC**, regarding the Rule to Show Cause Hearing scheduled for August 30, 2012, by mail, as follows:

Kenneth R. Moss, Esquire  
Wright, Worley, Pope, Ekster & Moss, PLLC  
1180 Highway 17 North, Suite 2  
P.O. Box 250  
Little River, SC 29566  
*Attorney for Defendants*

  
\_\_\_\_\_  
James K. Orzech, Ph.D.